

CITY OF ALAMEDA

Memorandum

To: Honorable Mayor and
Members of the City Council

From: Ann Marie Gallant
Interim City Manager

Date: November 16, 2010

Re: Adopt A Resolution Retaining Local Control Over Critical Land Use Decisions
and Requesting Local Government and Public Participation in the Proposed
Bay Conservation and Development Commission Climate Change Bay Plan
Amendment 1-08

BACKGROUND

The San Francisco Bay Conservation and Development Commission (BCDC) is proposing a Bay Plan Amendment (Amendment) to address the issues of climate change and the potential impacts of a rising sea level. As proposed, the Amendment would establish guidelines and policies for approximately 213,000 acres of land that could be vulnerable to a 55-inch sea level rise by the end of the century. Most of the area affected by the Amendment is outside BCDC's current jurisdiction, which is limited to land within 100 feet of the Bay. The Amendment would restrict local land use decisions for a number of large-scale infill projects in Alameda, including development of Alameda Point and the Northern Waterfront.

DISCUSSION

On October 7, 2010, BCDC received public comment on the proposed Amendment. Although BCDC has been preparing the Amendment for the last two years, there has been insufficient outreach to local agencies to understand the potential impacts to land use decisions. While general updates have been provided, careful coordination with the General Plans of cities and counties within the Bay Area as well as state required plans from other regional agencies, including the Metropolitan Transportation Commission and the Bay Area Air Quality Management District, have not been included in the process.

Staff is concerned that the Amendment may have unintended consequences on Alameda's infill development projects. In fact, the draft Amendment acknowledges that the plan may conflict with the "regional goal of encouraging infill development at closed military bases and in concentrating development near jobs and transit."

BCDC indicates it supports development on closed military bases and other infill sites, as long as sea level changes are taken into account. However, the proposal may require development projects located along Alameda's shorelines, including Alameda Point and the Northern Waterfront, to construct costly dikes or import extensive amounts of fill. In addition, the amendment's requirement for a risk assessment of a 100-year flood event with the 55-inch sea level rise may place existing properties in a flood zone, requiring higher insurance rates, without substantial evidence that the properties are at risk.

Staff supports the development of policies to address future sea level rise. However, it is essential that the policies be developed with input from all stakeholders through a comprehensive and solution-oriented approach. Furthermore, the policies need to be regionally consistent for all Bay Area jurisdictions and identify reasonably feasible mitigation measures that will protect against the impacts from a rising sea level. Staff recommends the City Council adopt a resolution requesting BCDC include direct local jurisdiction participation in the development of sea level rise policies to ensure that the regional policies do not unreasonably jeopardize local control over future land use decisions. Furthermore, BCDC should provide additional outreach to local jurisdictions to educate those impacted, coordinate with other jurisdictional plans, and provide input to modify the proposed Amendment.

FINANCIAL IMPACT

The financial impact of the proposed Amendment is unknown at this time. Depending on the final policies adopted by BCDC, there may be significant financial impacts on future development in Alameda, including Alameda Point and the Northern Waterfront. In addition, critical drainage infrastructure, such as outfalls and pump stations, may require major redesign and costly upgrades.

ENVIRONMENTAL REVIEW

It is BCDC's position that the proposed Amendment must meet the requirements of the McAteer-Petris Act and BCDC's standards for environmental review through an Environmental Assessment, rather than with the California Environmental Quality Act (CEQA). According to BCDC, Environmental Assessments are prepared in conformance with BCDC's regulations, which have been certified by the Secretary of Resources as functionally equivalent to CEQA. BCDC characterizes the proposed Amendment as a programmatic policy change rather than a specific project with more quantifiable impacts, and thus its background report entitled, *Living with a Rising Bay: Vulnerability and Adaptation in the San Francisco Bay and its Shoreline*, is more general than would otherwise be required for an environmental assessment for a specific project. Accordingly,

Honorable Mayor and
Members of the City Council

November 16, 2010
Page 3 of 3

it does not appear that BCDC has specifically prepared an environmental assessment document which would be the functional equivalent of a CEQA document for this proposed plan.

RECOMMENDATION

Adopt a resolution retaining local control over critical land use decisions and requesting local government and public participation in the proposed BCDC climate change Bay Plan Amendment 1-08.

Respectfully submitted,



Matthew T. Naclerio
Public Works Director

Approved as to funds and account,



Fred Marsh
Controller

MTN:BH:gc

CITY OF ALAMEDA RESOLUTION NO. _____

Approved as to Form


City Attorney

PROTECTING THE RESIDENTS AND BUINESSES OF THE CITY OF ALAMEDA FROM FUTURE SEA LEVEL RISE, RETAINING LOCAL CONTROL OVER CRITICAL LAND USE DECISIONS, AND REQUESTING LOCAL GOVERNMENT AND PUBLIC PARTICIPATION IN THE PROPOSED BAY CONSERVATION AND DEVELOPMENT COMMISSION CLIMATE CHANGE BAY PLAN AMENDMENT 1-08

WHEREAS, the City of Alameda was legally incorporated on April 19, 1854, and maintains police powers to ensure the health and well-being of its residents; and

Whereas, the State of California has recognized the role of local government in planning for and responding to climate change through its legislative actions, such as the Global Warming Solutions Act of 2006 (AB 32) and the Sustainable Communities and Climate Protection Act of 2008 (SB 375), and the California Air Resources Board has stated in its Climate Change Scoping Plan, that local governments are "essential partners" to achieving the State's climate change goals; and

Whereas, the City currently evaluates the effects of sea level rise and climate change as part of its standard environmental review process under the California Environmental Quality Act; and

Whereas, the City is developing a new Climate Change Element as part of its General Plan Update; and

Whereas, the Bay Conservation Development Commission (BCDC) is a limited purpose agency of the State of California; and

Whereas, BCDC staff has projected that sea level will rise 55 inches by the year 2100, identifying 213,000 acres of land around the Bay as being in the potential sea level rise inundation zone and vulnerable to flooding; and

Whereas, substantial portions of the City are within the identified inundation zone; and

Whereas, BCDC staff has prepared a proposed Bay Plan Amendment that would establish a policy that specifies, among other things, "until a regional sea level rise adaptation strategy can be completed, when planning or regulating new development in areas vulnerable to future shoreline flooding, new projects should be limited..."; and

Whereas, BCDC's legal authority and regulatory jurisdiction do not extend to much of the area covered by the inundation zone; and

Whereas, the proposed Bay Plan Amendment may impose additional burdens on the City in its compliance with the California Environmental Quality Act and may expose the City to additional risks of litigation under that Act; and

Whereas, BCDC staff has presented no analysis regarding the consistency of the proposed Bay Plan Amendment with existing General Plans or zoning laws of any of the cities or counties within the projected inundation zone, including Alameda; and

Whereas, BCDC staff has determined that low-income residents will be disproportionately affected by:

- Sea level rise in five Bay Area Counties.
- Preparing for and coping with sea level rise.
- Indirect impacts of sea level rise (e.g., from retrofits to protect critical infrastructure); and

Whereas, BCDC staff has stated that "...BCDC has no authority to address social equity issues..." and has proposed no mitigation measure to address these disproportionate impacts to low-income communities; and

Whereas, BCDC staff concluded in its report accompanying the proposed Bay Plan Amendment that "the proposed amendment will have no significant adverse environmental impacts," without consulting with impacted communities and without considering various direct, indirect, and cumulative adverse impacts of the proposed Bay Plan Amendment, including those relating to displacement of people and businesses, traffic congestion, and tail pipe and green house gas emissions that would result from limiting shoreline protection and infill development opportunities; and

Whereas, the proposed Bay Plan Amendment, if adopted, could adversely affect existing residential, commercial, institutional, and industrial uses and property values of the land within the inundation zone; and

Whereas, BCDC held its first public hearing on the proposed Bay Plan Amendment in almost one year on October 7, 2010; and

Whereas, numerous cities, agencies, landowners, employers, and Bay Area residents testified at the public hearing expressing great concern that insufficient outreach has occurred in the development of the proposed Bay Plan Amendment.

NOW, THEREFORE, BE IT RESOLVED, THAT the City Council of the City of Alameda does hereby oppose the adoption of the Bay Plan Amendment until such time as BCDC:

- Meets and confers with the City Council and other affected Cities and agencies around the Bay Area to present and discuss the proposed Bay Plan Amendment and work to revise it, as appropriate, in a collaborative manner;
- Conducts adequate environmental assessment for the proposed Bay Plan Amendments;
- Evaluates the consistency of the proposed Bay Plan Amendments with existing General Plans and zoning laws in cities and counties within the projected inundation zone;
- Identifies and addresses the equity impacts of the proposed Bay Plan Amendment and identifies all reasonably feasible mitigation measures to avoid such impacts;
- Identifies and addresses other environmental and economic impacts of the proposed Bay Plan Amendment and identifies all reasonably feasible mitigation measures to avoid such impacts; and Proposes a Bay Plan Amendment that does not assert BCDC direction or influence over traditional City land use planning authority.
- Proposes a Bay Plan Amendment that does not assert BCDC direction or influence over traditional City land use planning authority.

* * * * *

I, the undersigned, hereby certify that the foregoing Resolution was duly and regularly adopted and passed by the Council of the City of Alameda in regular meeting assembled on the 16th day of November 2010, by the following vote to wit:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

IN WITNESS, WHEREOF, I have hereunto set my hand and affixed the official seal of said City this 17th day of November 2010.

Lara Weisiger, City Clerk
City of Alameda